



**BILLING CODE: 7565-01**

**DEPARTMENT OF THE INTERIOR**

**National Indian Gaming Commission**

**25 CFR Part 543**

**RIN 3141-AA60**

**Minimum Internal Control Standards**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Indian Gaming Commission (NIGC) proposes to amend its minimum internal control standards for Class II gaming under the Indian Gaming Regulatory Act to correct an erroneous deletion of the key control standards and to make other minor edits and additions for clarity.

**DATES:** Written comments on this proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- Email comments to [543\\_comments@nigc.gov](mailto:543_comments@nigc.gov)
- *Mail comments to:* National Indian Gaming Commission, 1849 C Street, NW., MS 1621, Washington, DC 20240.
- *Fax comments to:* National Indian Gaming Commission at 202-632-0045.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Lawson at (202) 632-7003 or by fax (202) 632-7066 (these numbers are not toll free).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. On January 5, 1999, the NIGC published a final rule in the Federal Register called *Minimum Internal Control Standards*. 64 FR 590. The rule added a new part to the Commission's regulations establishing Minimum Internal Control Standards (MICS) to reduce the risk of loss because of customer or employee access to cash and cash equivalents within a casino. The rule contains standards and procedures that govern cash handling, documentation, game integrity, auditing, surveillance, and variances, as well as other areas.

The Commission recognized from their inception that the MICS would require periodic review and updates to keep pace with technology and has substantively amended them numerous times, most recently in late 2013 (78 FR 63873).

### **II. Development of the Rule**

On September 21, 2012, the Commission concluded nearly two years of consultation and drafting with the publication of comprehensive amendments, additions, and updates to Part 543, the minimum internal control standards (MICS) for Class II gaming operations (77 FR 58708). The regulations require tribes to establish controls and implement procedures at least as stringent as those described in this part to maintain the

integrity of the gaming operation. In late 2013, the Commission published a final rule, adding kiosk drop, count, fill, and surveillance standards to Part 543 (78 FR 63873).

Now, the Commission proposes additional revisions, largely technical in nature, that are meant to correct earlier editing oversights and to better clarify the intent of the provisions.

### **III. Regulatory Matters:**

#### *Regulatory Flexibility Act*

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

#### *Small Business Regulatory Enforcement Fairness Act*

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### *National Environmental Policy Act*

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

### *Paperwork Reduction Act*

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, et seq., and assigned OMB Control Number 3141-0009. The OMB control number expires on November 30, 2018.

### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation

Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

The key control language proposed here is the most substantive of all the changes and was the subject of extensive consultation in 2012 (77 FR 58708). The language proposed here has not changed since initially adopted. It was inadvertently written over with the addition of kiosk controls in 2013. The remaining changes are all technical in nature, correcting numbering and adding minor clarifications.

### **List of Subjects in 25 CFR Part 543**

Accounting, Administrative practice and procedure, Gambling, Indian—Indian lands, Reporting and recordkeeping requirements.

For the reasons discussed in the Preamble, the Commission proposes to amend 25 CFR part 543 as follows:

### **PART 543 - - MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING**

1. The authority for part 543 continues to read as follows:

Authority: 25 U.S.C. 2702(2), 2706(b)(1-4), 2706(b)(10).

2. Amend § 543.10 by revising paragraph (e) to read as follows:

§ 543.10      What are the minimum internal control standards for card games?

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(e) *Standards for reconciliation of card room bank.* Two agents—one of whom must be a supervisory agent—must independently count the main card room bank and table inventory at the end of each shift and record the following information:

- (1) Date;
- (2) Shift;
- (3) Table number (if applicable);
- (4) Amount by denomination;
- (5) Amount in total; and
- (6) Signatures of both agents.

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3. Amend § 543.17 by revising paragraphs (d), (i)(4)(i), and (j) to read as follows:

§ 543.17      What are the minimum internal control standards for drop and count?

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(d) *Card game drop standards.* Controls must be established and procedures implemented to ensure security of the drop process. Such controls must include the following:

- (1) Surveillance must be notified when the drop is to begin so that surveillance may monitor the activities.
- (2) At least two agents must be involved in the removal of the drop box, at least one of whom is independent of the card games department.

(3) Once the drop is started, it must continue until finished.

(4) All drop boxes may be removed only at the time previously designated by the gaming operation and reported to the TGRA. If an emergency drop is required, surveillance must be notified before the drop is conducted and the TGRA must be informed within a timeframe approved by the TGRA.

(5) At the end of each shift:

(i) All locked card game drop boxes must be removed from the tables by an agent independent of the card game shift being dropped;

(ii) For any tables opened during the shift, a separate drop box must be placed on each table, or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Card game drop boxes must be transported directly to the count room or other equivalently secure area by a minimum of two agents, at least one of whom is independent of the card game shift being dropped, until the count takes place.

(6) All tables that were not open during a shift and therefore not part of the drop must be documented.

(7) All card game drop boxes must be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift, if applicable.

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(i) \*\*\*

(4) \*\*\*

(i) The count of each box must be recorded in ink or other permanent form of recordation.

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(j) *Controlled keys*. Controls must be established and procedures implemented to safeguard the use, access, and security of keys in accordance with the following:

(1) Each of the following requires a separate and unique key lock or alternative secure access method:

- (i) Drop cabinet;
- (ii) Drop box release;
- (iii) Drop box content; and
- (iv) Storage racks and carts used for the drop.

(2) Access to and return of keys or equivalents must be documented with the date, time, and signature or other unique identifier of the agent accessing or returning the key(s).

(i) For Tier A and B operations, at least two (2) drop team agents are required to be present to access and return keys. For Tier C operations, at least three (3) drop team agents are required to be present to access and return keys.

(ii) For Tier A and B operations, at least two (2) count team agents are required to be present at the time count room and other count keys are issued for the count. For Tier C operations, at least three (two for card game drop box keys in operations with three tables or fewer) count team agents are required to be present at the time count room and other count keys are issued for the count.



(3) Documentation of all keys, including duplicates, must be maintained, including:

- (i) Unique identifier for each individual key;
- (ii) Key storage location;
- (iii) Number of keys made, duplicated, and destroyed; and
- (iv) Authorization and access.

(4) Custody of all keys involved in the drop and count must be maintained by a department independent of the count and the drop agents as well as those departments being dropped and counted.

(5) Other than the count team, no agent may have access to the drop box content keys while in possession of storage rack keys and/or release keys.

(6) Other than the count team, only agents authorized to remove drop boxes are allowed access to drop box release keys.

(7) Any use of keys at times other than the scheduled drop and count must be properly authorized and documented.

(8) Emergency manual keys, such as an override key, for computerized, electronic, and alternative key systems must be maintained in accordance with the following:

(i) Access to the emergency manual key(s) used to access the box containing the player interface drop and count keys requires the physical involvement of at least three agents from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating persons signing out/in the emergency manual key(s);

(ii) The custody of the emergency manual keys requires the presence of two agents from separate departments from the time of their issuance until the time of their return; and

(iii) Routine physical maintenance that requires access to the emergency manual key(s), and does not involve accessing the player interface drop and count keys, only requires the presence of two agents from separate departments. The date, time, and reason for access must be documented with the signatures of all participating agents signing out/in the emergency manual key(s).

(9) Controls must be established and procedures implemented to safeguard the use, access, and security of keys for kiosks.

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4. Amend § 543.18 by revising paragraph (d)(6)(v) to read as follows:

§ 543.18      What are the minimum internal control standards for the cage, vault, kiosk, cash and cash equivalents?

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(d) \*\*\*

(6) \*\*\*

(v) Dollar amount per financial instrument redeemed;

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5. Amend 543.23 by revising paragraph (c)(1)(viii) to read as follows:

§ 543.23      What are the minimum internal control standards for audit and accounting?

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(c) \*\*\*

(1) \*\*\*

(viii) Drop and count standards, including supervision, count room access, count team, card game drop standards, player interface and financial instrument drop standards, card game count standards, player interface financial instrument count standards, collecting currency cassettes and financial instrument storage components from kiosks, kiosk count standards, and controlled keys;

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6. Amend 543.24 by revising paragraphs (a) and (d)(5) to read as follows:

§ 543.24       What are the minimum internal control standards for auditing revenue?

(a) *Supervision.* Supervision must be provided as needed for revenue audit by an agent(s) with authority equal to or greater than those being supervised.

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(d) \*\*\*

(5) *Complimentary services or items.* At least monthly, review the reports required in § 543.13(c). These reports must be made available to those entities authorized by the TGRA or by tribal law or ordinance.

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DATED: May 1, 2018, Washington, DC.

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Jonodev O. Chaudhuri  
Chairman

Dated: May 7, 2018.

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Kathryn Isom-Clause  
Vice Chair

Dated: May 1, 2018.

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E. Sequoyah Simermeyer  
Associate Commissioner

Dated: May 4, 2018.

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